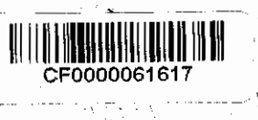
XII-189 (Jail) C J.P.R./9-94

Cr. A 1121 97

(2)

APPEAL OF PRISONER



No दण्डिक अपील नम्बर- 142/55 Name वाहिद खान

Father's name मोहम्मद अली.

Single Bench (Criminal)

Residence ग्राम- कटमपारा, गिरारी, थाना- पेण्ड्रा, जिला- बिलासपुर. Age 29 वर्ष

Sentenced to 10 वर्ष, 1,00,000/- जुर्माना या 2 वर्ष अतिरिक्त on 16-5-1997

Under Section 20 B. N. D. P. S. by - D.J. बिलासपुर (श्री दिलीप देशमुख)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement —

2 Date on which copy received 16 मई 1997

3 Date on which Appeal sent No 40/172 dated 26/5/97 Date - 26-5-97

4 Whether the prisoner wishes to be represented or not हाँ

No विशेष दण्डिक प्रकरण - 157/96 Name वाहिद खान पि० मोहम्मद अली

Confined in जिला Jail बिलासपुर (मध्यप्र०)

No. 40/172 Dated 26-5- 1997

Forwarded to the रजिस्ट्रार, माननीय उच्च न्यायालय मध्यप्रदेश जबलपुर,

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent
Jail
जिला जेल बिलासपुर

26/5/97

Date of receipt in _____ Office _____

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the _____

Date of receipt in Appellate court _____

(P. T. O.)

(16) A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA

Criminal Appeal No.1121 of 1997

Vahid Khan

Versus

State of Chhattisgarh

J U D G M E N T

POST FOR 30 - 8-2005

Sd/-
V.K.Shrivastava
Judge

(17)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.1121 of 1997
(Appeal of Prisoner)

Appellant : **Vahid Khan,**
S/o Mohammed Ali, Aged about 29 years, R/o Kadampara, Girari, Police Station Pendra, District Bilaspur (CG)

Versus

Respondent : **State of Chhattisgarh**

Mr. Rajendra Soni, counsel for the appellant.
Mr. J.D.Bajpai, Additional Public Prosecutor and Mr. D.K.Gwalre, Panel Lawyer for the respondent/State.

J U D G M E N T

(Delivered on 30 -8-2005)

Per Vijay Kumar Shrivastava, J.

This appeal has been directed against the judgment of conviction and order of sentence dated 16-5-1997 passed by Sessions Judge, Bilaspur in Special Criminal Case No.157/96, whereby convicting the appellant under Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act') and sentencing the appellant to undergo R.I. for 10 years and to pay a fine of Rs.1 Lakh, in default of payment of fine to undergo additional R.I. for 2 years.

2. Station House Officer, Pendra, on 13-9-1996 at about 5 P.M. received an information that the appellant has kept in his

house Charas. Shri M.P.Dubey, Station House Officer entered the information in daily diary and finding that if time will be consumed in obtaining search warrant, by that time, the appellant may shift the Charas from the spot or may abscond, therefore, he made an entry to that effect in Rojnamcha Sanha and thereafter sent the necessary information to S.D.O.(P.), Gaurella. Shri M.P.Dubey reached the house of the appellant. By a written notice, he summoned the witnesses, also gave information to the appellant that he has kept Charas unauthorisedly in his house, therefore, house is to be searched and after obtaining his consent, got prepared consent letter and in the presence of witnesses and the appellant, searched the house of the appellant. During search, a wooden box containing Charas was found in the kitchen. The same was got weighed. On weighing, it weighed 200 Grams of Charas and separated a part thereof as sample for chemical examination. Charas so recovered was seized and sealed. On chemical examination, the seized article has been found to be Charas (Hashish). After completing the investigation, the charge-sheet has been filed.

3. Charge under Section 20(b)(ii) of the Act was read over and explained to the appellant, who abjured his guilt. His defence is that he is innocent and has been falsely implicated. Learned trial Court evaluating the evidence adduced by the prosecution in support of allegations leveled against the appellant held the appellant guilty for committing offence punishable under Section 20(b)(ii) of the Act and sentenced him as aforesaid.

4. Both the parties are heard. Record of trial Court is perused.

5. Shri M.P.Dubey, Police Sub-Inspector/Officer-in-Charge, Police Station Pendra, in his evidence has deposed that on 13-9-1996, he received information from an informer that the appellant has kept in his house illicit Charas and is unauthorisedly involved in selling the same. He recorded the information in Sanha No.1033 and finding that delay will be caused in obtaining search warrant and by that time the appellant may dispose of the Charas, he made another entries in Sanha No.1034. He thereafter sent information in writing to S.D.O.(P.), Gaurella and started for the spot. On reaching the spot, he summoned witnesses Onkar Prasad and Brijesh by written notice. Accompanied with witnesses, he came to the appellant's house. The appellant was present there. He informed the appellant that he has kept Charas, therefore, search is to be made. The appellant gave his consent for search. He himself and witnesses gave their personal search to the appellant and thereafter in presence of witnesses the house was searched. In Kitchen, about 200 Grams of Charas was found, Panchnama was prepared. On weighing, the Charas was found to be 200 Grams. 10 Grams for sample was separated. Article recovered was sealed, seizure was prepared and then the appellant was arrested. On spot, Dehati Nalisi was got recorded.

6. Shri M.P.Dubey, P.W.-2 has further deposed that seized property was deposited in Malkhana. The sample was sent for chemical examination through Police Constable No.134, Fekulal.

After examination, report was received. After investigation, he filed the challan and also the property.

7. Onkar Prasad, P.W.-1, who is an independent witness, in his evidence deposed that he was called near the appellant's house vide a written notice. He and Brijesh reached the appellant's house. The appellant was informed by the Police that his house is to be searched, thereafter Station House Officer gave his search and they also gave their search. They entered the appellant's house. The appellant from his house gave Charas. On weighing the same, it was found 200 Grams. Regarding search, documents have been prepared. Weighing and sampling has been done and necessary documents have been prepared thereafter the appellant was arrested.

8. Shri M.P.Dubey, P.W.-2 and Onkar Prasad, P.W.-1 have proved notice, Ex.P-1, search memo, Ex.P-2, weighing certificate, Ex.P-3, seizure of Charas, Ex.P-4 and Panchnama, Ex.P-5. Shri M.P.Dubey, P.W.-2 further proved the Dehati Nalisi, Ex.P-9, the information recorded in Sanha, Ex.P-11, without obtaining search warrant for proceeding to spot, that Sanha, Ex.P-12, information sent to higher officials, Ex.P-13, for starting to spot relating to that entry, Ex.P-14, Malkhana Register and the entry relating to seized property deposited in Malkhana, Ex.P-15, letter sent to F.S.L. for chemical examination of the seized sample, Ex.P-16, acknowledgment given by F.S.L., Ex.P-17 and the report received from F.S.L., Ex.P-18. In Court during trial when he was examined by the Court, he also proved the relevant seal, article K, Kh and G. In cross-examination, Shri M.P.Dubey, P.W.-2 has admitted that the

property was deposited in Malkhana on 13-9-1996 and on 19-10-1996 the sample was sent to F.S.L. and the said sample was received by F.S.L. on 29-10-1996.

9. The appellant's contention is that because of such unexplained delay, it is doubtful that the same article has been examined by chemical examiner which was seized from the house of the appellant. This contention has no force because the property was sealed on spot and as per Ex.P-17 the property was received intact in sealed condition by the F.S.L. The appellant's further contention is that procedure prescribed for search has not been followed by the Station House Officer in accordance with law. This contention has also no force. Shri M.P.Dubey is an authorised Officer under Section 42 of the Act for conducting search, who on receiving information from informer, took it down in writing. He also recorded the grounds for taking search without obtaining search warrant or authorisation. He also forthwith sent the information to his immediate superior officer. For taking search, he also called to independent witnesses of the vicinity and after following necessary procedure for taking house search, he in presence of the appellant as well as independent witnesses took search of the house.

10. Both the witnesses have been tested by the cross-examination but nothing substantial has been brought in their cross-examination so as to discredit their version. From aforesaid oral statement duly corroborated with various proved documents stated above, it was established that in accordance with prescribed procedure, the appellant's house has been searched and the

property said to be Charas has been recovered. On chemical examination vide report Ex.P-18, chemical examiner has found the sample of the seized property to be Charas (Hashish). I am of the opinion that learned trial Court, after evaluating the evidence and considering the relevant provisions, has correctly held the appellant guilty for unauthorised possession of Charas (Hashish) and correctly held him guilty under Section 20(b)(ii) of the Act so also punished him according to the mandate of the said provision.

11. In the result, the appeal fails. Judgment of conviction and order of sentence passed by the trial Court is confirmed. Appeal dismissed.

Sd/-
V.K.Shrivastava
Judge

G.Singh